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ZONING PITFALLS FOR THE APPRAISER

IN zoning laws, as in most legal documents, it's the "fine print" you fail to read that gets you into trouble. The appraiser who is content just to know whether a property is zoned for residential, commercial, or industrial sometimes finds himself in the embarrassing position of pleading ignorance and admitting his concluded value was not based on the "fine print." Unless he understands and uses his local zoning ordinances, the appraiser may stumble into numerous pitfalls.

Most zoning laws (and what city, town or hamlet is without one today!) follow a fairly uniform pattern. This situation exists because many of our States have adopted enabling legislation along the lines suggested by the U. S. Department of Commerce and the U. S. Chamber of Commerce in 1924. Counties and incorporated places then, in turn, have enacted local zoning ordinances as permitted by the States. Nearly all are based on the unchallengeable phrase "in the interest of public health, safety, morals, and general welfare" (the last in case the first three reasons fail to cover every situation).

USE REGULATIONS - Control over the use of every piece of property is the most familiar and most important function of zoning. Since appraisers usually seek to establish "highest and best use" it becomes evident why zoning is so important to the appraiser. City planners recognize this and declare that their zoning regulations preserve, enhance and stabilize property values.

A zoning ordinance usually has a District Use Map which shows the land use plan for an entire area. This map becomes the key for finding exactly in what district a property is located. Here we find a wide range of terminology for the various district zones. If residential, it may be single-family, two-family, four-family, rowhouses, group houses, garden apartments, multiple dwellings, etc. If single-family residential, it is usually further subdivided by a designation known as "lot area per family," which may range from 4,000 square feet to up to 5 acres per family. After all the residential districts are listed, there are various commercial districts to watch out for - local business, downtown district, and in-between types usually characterized by permission of specific uses and certain height limitations. Generally, industrial districts (if more than one) are divided into three types, "light industry," "heavy industry," and "unrestricted." In all, the three basic land uses - residential, commercial and industrial - are covered frequently by as many as 12 separate zoning districts.

After the proper district has been determined, the appraiser should know what the zoning ordinance has to say about the permitted uses for this district, their height, yards, density, and off-street parking requirements. Sometimes this becomes quite a chore since there are always referrals to other district regulations and to other sections which grant exceptions. For example, a single-family dwelling district may permit only single-family dwellings, churches, schools, libraries, and customary home occupations. Watch out. The appraiser had better know what the definition in the front of the ordinance has to say about home occupations. Also, there is a good chance that the definition for a rooming house contains a phrase that says there must be five or more persons renting rooms before it is called a rooming house and hence prohibited from the single-family district. Also, if he turns over eight or ten more pages, the appraiser will find another section called "Additional Use Regulations," which permits two-family dwellings in a single-family district (1) if at least 40% of the frontage is already developed with two-family structures. "Frontage" is the key word in this simple statement, so the appraiser had better go back to definitions again to find whether frontage is defined as one or both sides of a street and whether it is based on number of ownerships or total number of feet of lot frontage.

One difficulty in the understanding of many zoning ordinances is the switching from permitted uses to prohibited uses. Theoretically, each zoning district from the most restrictive on down includes the uses permitted in all preceding or more restricted districts. This works fine until a district regulation is found which permits "all uses except the following:" and at the end of this list is usually a reference to other zoning districts which follow and the uses which they permit. Also, more recent ordinances and revisions now prohibit residential uses in industrial districts.

NONCONFORMING USES - Why is it so important to examine carefully the zoning regulations for a particular property being appraised? Aside from determining how the property might be developed to its highest and best use, it is necessary to find out whether it conforms to the zoning regulations or not. Since zoning laws are relatively new in terms of the age of many of our structures, it is very common to find many "nonconforming uses." Calling a property a nonconforming use is not necessarily calling it a bad name. In fact, frequently a property which does not conform to the zoning has a higher value as it may enjoy all the characteristics of a monopoly with the threat of competition eliminated by the regulations.

On the other hand, the appraisers may discover some of that "fine print" in a special section of the ordinance which calls for the physical elimination of nonconforming uses within specified periods of time. For uses of land which do not conform it may be only 1 year. For structures it may be 10 to 20 years to allow time to amortize the investments in the improvements.

Many zoning laws permit nonconforming uses to continue indefinitely so long as their use is not discontinued or changed to a more objectionable type use. One

important characteristic of nonconforming uses is that generally they "shall not be converted, enlarged, reconstructed, or structurally altered" unless to conform to the zoning. This type of provision imposes quite a hardship for some older structures. However, this does not preclude maintenance, and they usually may be replaced in the event of some calamity.

SPECIAL USE PERMITS - Virtually every zoning ordinance contains a section permitting certain uses according to the discretion of the zoning or planning commission and the governing body. Originally this section was intended to take care of unusual uses such as airports, cemeteries, hospitals, and the like. More recently, however, there has been a trend to throw certain "problem" uses such as service stations, garages, churches, and drive-in establishments into this special use section. Some courts have held such provisions illegal and merely attempts to single out uses which could be taken care of by regular district zones. Suburban areas, particularly, have been using this section as an effective way of actually limiting these "problem" uses, substituting arbitrary judgment for the law of supply and demand. Appraisers should watch for these provisions because existing service stations, for example, in a community which is attempting to discourage any new service stations may take on a certain monopolistic value.

AREA REQUIREMENTS - In addition to regulating uses, zoning ordinances have specific regulations for height, yards, lot widths, and lot areas per family. All of these restrictions limit the intensity of use of property. Properly conceived and administered, they generally protect and enhance the value of a subject property and neighboring properties in line with the appraisal principle of conformity. It is especially important for the appraiser to know what these area requirements are. For example, the value of a tract of ground may vary considerably depending on whether it may be developed with minimum 50-foot, 6,000-square-foot lots or 200-foot, 1-acre lots.

Appraisers should be aware of the usual section which states that a property shall not be reduced in size so that its area or yards would not conform. Then, again, what is the value of a vacant lot which does not conform to the district regulations and cannot be built upon? It may be that if this lot was a "lot of record" prior to the enactment of the ordinance, the restrictions would not be enforceable.

Frequently there are conflicts between subdivision or deed restrictions and the zoning regulations. Which shall apply? Courts have held that whichever is the more restrictive shall apply.

PARKING REGULATIONS - New zoning laws and amendments to older laws now have minimum off-street parking and loading requirements for each district. For residential districts the number of parking spaces which must be provided is based on the number of dwelling units. In commercial districts the basis is usually the floor area of the various types of uses. For places of assembly such as

churches and theaters the requirement is based on the number of seats. Industries must provide parking spaces in line with number of employees.

Usually there is a minimum floor area below which figure no parking is required. The appraiser should study these regulations carefully since they may affect materially the area of a lot which must be left open. However, parking requirements may be complied with if parking is provided within a certain minimum distance of the property. Several property owners, in fact, may join together to meet parking requirements.

As in the case of other zoning regulations, these parking requirements cannot be retroactive. Suppose, however, that a substantial addition to an existing building is constructed; then parking and all other regulations must be met.

ZONING ADMINISTRATION - Generally, the zoning laws are enforced by the building department of the city or county, along with the building code. The execution of these regulations leaves no room for discretion. In cases of hardship and other limited situations, a board of adjustment may grant permission to violate the zoning regulations. Unfortunately, this provision has opened the door for many exceptions which should never be allowed under the spirit and letter of the law. Also, zoning changes in the form of "spot zones" can be arranged in some localities. The appraiser should be aware of the actual strength of zoning ordinances in his area and should always lend his support whenever possible to strengthen them.

ZONING FILE - Certainly every appraiser's file should contain copies of the zoning ordinances and district maps for the areas in which he is active. It is also important to keep abreast of changes and amendments to these documents. Above all, it doesn't take much effort to read through the "fine print" from time to time in order to interpret properly the zoning for properties being appraised.

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